IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

No. 10 COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING.

[Chapter VIII, Rule 32(2) (b)]

Criminal appeal No. 261/2002
Jasvinder Singh and another
Vs
State of Uttaranchal.

AND
Criminal Appeal No. 262/2002
Dilbagh Singh
Vs.
State of Uttaranchal.

With
Criminal Revision No. 121/2002
Gurudev Singh Vs. State and others.

Decided on 26-5-2005

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(Hon'ble Irshad Hussain, J.)
26-5-2005

(Hon'ble Prafulla C. Pant, J.)
26-5-2005

In the High Court of Uttaranchal, at Nainital.
Criminal Appeal No. 261/2002

1- Jasvinder Singh S/o Late Sri Jeet Singh,

2- Smt. Veero Kaur W/o Late Sri Jeet Singh,

R/o village Kela Banwari P.S. Bazpur,

District Udham Singh Nagar … Appellants.

Vs.

State of Uttaranchal …. Respondent.

AND

Criminal Appeal No. 262/2002

Dilbagh Singh S/o Late Sri Jeet Singh

R/o village Kela Banwari P.S. Bazpur,

District Udham Singh Nagar … Appellant.

Vs.

State of Uttaranchal …. Respondent.

Sri P.M.N. Singh, learned Senior Advocate, assisted by Ms. Prabha Nauliyal and Sri Arvind Vashisth, learned counsel for the appellants.
Sri Amit Bhatt, learned A.G.A. for the State.
Sri Dharam Veer Sharma, learned Senior Advocate assisted by Sri B.S. Parihar, learned counsel for the informant/complainant.

WITH

Criminal Revision No. 121/2002

Gurudev Singh … Revisionist.

Vs.

State of Uttaranchal and others …. Respondents.

Sri Dharam Veer Sharma, learned Senior Advocate assisted By Sri B.S. Parihar, learned counsel for the revisionist.

Sri P.M.N. Singh, learned Senior Advocate assisted by Ms. Prabha Nauliyal and Sri Arvind Vashisth, learned counsel for the respondents-accused.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Prafulla C. Pant, J.

Dated: 26th May, 2005.

(Per : Hon'ble Irshad Hussain, J.)

These appeals and revision arise out of the judgment dated 1-10-2002 passed by the then Sessions Judge, Udham Singh Nagar at Rudrapur in Sessions Trial No. 345/2001. Five accused faced trial. Out of those five, Sukhdev alias Satnam and Tejendra Singh were not held guilty and acquitted. Accused Smt. Veero Kaur and

her two sons accused Dilbagh Singh and Jasvinder Singh were convicted and sentenced to imprisonment as under:-

Sl. No	Name of the accused	Convicted under Sections	Sentence of imprisonment
1- 2-	Dilbagh Singh and Jasvinder Singh	(a) under Section 302/149 I.P.C. (b) under Section 307/149 I.P.C. (c) under Section 148 I.P.C.	- imprisonment for life - Rigorous imprisonment for five years. - Rigorous imprisonment for two years.
3-	Smt. Veero Kaur	(a) under Section 302/149 I.P.C. (b) under Section 307/149 I.P.C. (c)under Section 147 I.P.C.	-Imprisonment for life. -Rigorous imprisonment for five years. -Rigorous imprisonment for one year

2- Informant Gurudev Singh being aggrieved by the judgment of acquittal of the two accused preferred the revision.

3- Sri Jeet Singh, the husband of accused Smt. Veero Kaur and father of other two convicted accused was the real brother of Gurdeep Singh deceased, one of the two victim of the incident in question. The other victim Kulwant Singh deceased was his son. Informant Gurdev Singh (P.W.1) is his another son, whereas injured-eye witness Smt. Preetam Kaur (P.W.3) is his widow. Sukhdev alias Satnam and Tejendra Singh, who were acquitted are the sons of Smt. Swarna Kaur and Smt. Charanjit Kaur respectively, the sisters of accused Smt. Veero Kaur. Both the brothers late Jeet is and Gurdeep Singh deceased have their residential houses adjacent to each other in village Kela Banwari. The way from village Banna kheda comes to the house of Gurdeep Singh deceased from in front of the house of late Jeet Singh. At the

time of the incident these family members of the two brothers were residing in these houses. The inter se relationship and the factual position of the houses is not in dispute.

4- The prosecution case is that on 26-1-2001 Gurdeep Singh and his son Kulwant Singh were coming from Banna kheda on motorcycle No. U.P. 04-B-9904, then driven by Gurdeep Singh and Kulwant Singh was the pillion rider. At about 11.45 A.M. they reached in front of the house of late Jeet Singh. At that point of time accused Dilbagh Singh and Jasvinder Singh armed with rifle and a gun respectively and two of their companions identifiable by their faces and each of them having of rifle, were found present there. All these four in order to kill Gurdeep Singh and Kulwant Singh started firing on them where as Smt. Veero Kaur who was also standing there exhorted them to kill both the victims. Kulwant Singh on receiving fire arm injuries, fell on the ground and died instantaneously, but Gurdeep Singh started running from there and entered his house. The accused-assailants followed him while firing at him as a result of which he (Gurdeep Singh) also breathed his last due to fire arm injuries. Smt. Preetam Kaur and her son informant Gurudev Singh were at that time in the way in front of the house as they were to leave for Bazpur town. In the incident Smt. Preetam Karu was hit by a fire arm shot and sustained injury. Both of them witnessed the incident. They also raised an alarm whereby Balbir Kaur wife of Kulwant Singh deceased, (the sister-in-law of the informant) came out of the house and saw the incident. As a result of the firing, the window-pans of the house of the victims were also broken.

5- According to the prosecution, on account of litigation pertaining to land, the accused were entertaining enmity and grudge against the victims and they gave vent to their feeling by committing said crime.

6- After the occurrence, informant Gurudev Singh (P.W.1) prepared written report, Ext. Ka.1 and delivered it at P.S. Bazpur. On its basis whereof check F.I.R., Ext. Ka.4 was drawn up the same day, that is, 26.1.2001 at 1.45 P.M. under Sections 147/148/149/307/302 I.P.C. Station Officer R.C. Thapliyal (P.W.8)

took up the investigation of the case. He left for the village of the occurrence and held inquest on the dead bodies of the two victims, attached sample of blood-stained and plain earth from the scene of the occurrence, besides other articles. The packed and sealed dead bodies of the two deceased were sent for post mortem. In the course of the investigation he recorded the statements of the witnesses and one of the eye witness Sukhdev Singh (P.W.4) the cousin of the informant, gave out the names of the two assailants not nominated as such in the written F.I.R. and this is how these two Satnam and Tejendra were brought to the book. The informant and his mother were also convinced about the identity of these two assailants and they affirmed their participation in the incident. Accused Dilbagh Singh and Jasvinder Singh were arrested on 31-1-2001 and the licensed rifle and 12 bore gun of Dilbagh Singh were recovered. These were sent for examination and verification to the expert along with other items including the empty cartridges and bullet attached by the Investigating Officer from the scene of the incident and on completion of the usual formalities of the investigation, charge sheet was submitted against all the five accused-assailants on 31.3.2001 showing accused Satnam Singh and Tejendra Singh as absconders.

7- On the case being committed to the Court of Sessions, the charges were framed against all these five on 23-3-2002. The accused did not admit the accusations of the prosecution and attributed enmity as the cause for their implication in the crime. Prosecution to bring home guilt to the accused placed reliance on the evidence of eight witnesses including P.W.1, Gurudev Singh, the informant eye witness, P.W.3 Smt. Preetam Kaur injured of the case and P.W.4, Sukhdev Singh, another eye witness. They narrated the prosecution case as set up in the F.I.R. and at the same time also reiterating that the assailants not nominated in it were Sukhdev alias Satnam and Tejendra Singh. P.W.2, Dr. M.M.. Prasad proved medical examination and injuries found on the person of Smt. Preetam Kaur. P.W.5, H.C. Ramesh Singh formally proved check F.I.R., Ext. Ka.4 and G.D. report of registration of the case on its basis. P.W.6, S.I. Shyam Narayan Mishra has prepared

inquest report of the two deceased under the supervision of S.H.O. The inquest report of Kulwant Singh deceased is Ext. Ka.6 and whereas the inquest report of Gurdeep Singh deceased is Ext. Ka.10. This witness also connected and proved other papers including challan reports of the inquest of the two deceased. P.W.7, Dr. Shamim Ahmad, the Autopsy Surgeon, proved post mortem examination reports of Gurdeep Singh deceased (Ext. Ka.15) and of Kulwant Singh deceased (Ext. Ka.16). P.W.8, S.I. Rakesh Chandra Thapliyal was the station officer of P.S. Bazpur on the date of the incident and he investigated the crime. He proved various steps taken in the investigation including the site- plan, seizure memos of the recoveries of the material exhibits and charge sheet filed in the case. This all of the prosecution evidence. In defence accused did not adduce any oral evidence . By way of documentary evidence two photographs, copy of pass-port of accused Tejendra Singh, his saving banks pass book with photograph and copy of the questionnaire and reply of the court of Additional Chief Judicial Magistrate, Kashipur were filed.

8- The learned Sessions Judge made appreciation of the evidence in the case and placed reliance on the evidence of the informant P.W.1, and his injured mother P.W.3, the two eye witnesses of the incident and found that their evidence was corroborated by the medical evidence in the case as well as the F.I.R. lodged without delay in regard to the involvement of the three accused Dilbagh Singh, Jasvinder Singh and Smt. Veero Kaur and accordingly conviction was made and sentences imposed against them as aforesaid. The evidence of so called eye witness P.W.4, Sukhdev Singh was not found reliable apart from the other evidence in the case in relation to the other two accused namely Tejendra Singh and Satnam and therefore they were acquitted of the charges levelled against them.

9- In support of the appeal the learned Senior Advocate appearing on behalf of the appellants and also on behalf of the accused-respondents in the criminal revision submitted that the evidence of P.W.1 and P.W.3 should not have been relied upon by the learned Sessions Judge and the injuries as noticed by the

doctors (P.W.2 and P.W.7) do not corroborate the evidence of the alleged eye witnesses. According to him the F.I.R. of the case was prepared after the steps towards investigation of the crime have already been taken and it was made to conform to the injuries of the two deceased to saddle the responsibility of the crime on the appellant. He further urged that the learned Sessions Judge has not properly analyzed the evidence in relation of the accused convicted in the case and that they were also entitled to have been held not guilty like the two other alleged assailants acquitted on scrutiny of the evidence. Learned counsel also urged that the investigation of the crime has been tainted and unfair.

10- In response, learned Senior Advocate appearing on behalf of the complainant and the learned A.G.A. submitted that the two eye witnesses relied upon by the learned Sessions Judge were the most probable and natural witnesses of the occurrence and that P.W.3 in addition to her being the eye-witness was also the victim of the incident and there was no reason as to why they will let the real culprit go scott-free and falsely implicated the innocent. They accordingly urged that the evidence of the eye witnesses which was corroborated by the medical evidence as well as the prompt F.I.R. proved beyond doubt the participation of the accused in the crime. On this backdrop we have to see whether the learned Sessions Judge was right in convicting the three accused and acquitting the other two.

11- We find it desirable to refer in the first instance the medical evidence in the case. P.W.7, Dr. Shamim Ahmad held autopsy on the dead bodies of Gurdeep Singh and Kulwant Singh on 27-1-2001 from 10-30 A.M. and prepared the post mortem examinations reports. The post mortem examination report of Gurdeep Singh deceased is Ext. Ka.15 and according to the Medical Officer, the following ante-mortem injuries were detected on the person of the deceased:-

1- Multiple fire arm wounds of entry size varying from 0.5 cm x 0.5 cm to 1cm x 1cm and muscle, abdominal cavity deep on the left side of abdomen, 1cm lateral to

umbilicus. Margins of wounds are inverted. (NO) blackening and tattooing.

2- Multiple fire arm wounds of entry four in number and size varying from 0.5cm x 0.5 cm to 1cm x 1cm and muscle, abdominal cavity deep on right side of abdomen, 8cm lateral to umbilicus. Margins of wounds are inverted. No blackening and tattooing; in an area of 10cm x 8cm.

3- Multiple fire arm wounds of entry size varying from 0.3 cm 0.3cm to 1cm x 1cm and skin to muscle deep on the antero lateral surface of left thigh, 8cm below and antero superior-illiac-spine. Margins of wounds are inverted. NO blackening and tattooing; in an area of 13cm x 12cm.

On internal examination both the chambers of the heart were empty. Peritoneum were ruptured. There was 200 grams semi-digested food in the stomach. Small intestine was also lacerated and there was semi digested food in it. Large intestine was also lacerated. Eight metallic pellets (six small and two big) were recovered from the body.

12- The post mortem report of Kulwant Singh deceased prepared by the doctor is Ext. Ka.16 on the record. The following ante-mortem injuries were detected on the person of this victim:-

1- Fire arm wound of entry on the right side of nose at ala of nose, 1.5cm x 1.5cm x communicating to injury No.2. margins of wound inverted. No blackening and tattooing.

2- Fire arm would of exit on the left side head, 20cm x 15 cm x communicating to injury No.1. Margins of wound everted and lacerated.

3- Fire arm wound of entry 2cm x 2.5 cm x communicating to injury No.4 on the epigestric region of abdomen. Margins of wound inverted. (NO) blackening and tattooing.

4- Fire arm wound of exit 4xm x 3cm x communicating to injury No.3 on the front of left shoulder. Margins of wound everted and lacerated.

5- Fire arm wound of entry 1.5 cm x 1cm x communicating to injury No.6 on the back, 2.5cm towards left to mid line

and 15cm above to upper part of fold between two hips. Margins of wound inverted. (NO) blackening and tattooing.

6- Fire arm wound of exit 5cm x 4cm on the right side abdomen, 15 cm below the right nipple at 7 o'clock position. Margins of wound everted and lacerated.

7- Fire arm wound of entry 1.5cm x 1.5cm x communicating to injury No.8, on the medial surfact of right arm, 3cm above the wrist joint. Margins of wound inverted. No blackening and tattooing.

8- Fire arm wound of exit 4cm x 3.5cm x communicating to injury No.7 on the lateral surface of right arm, 5cm above the wrist joint. Margins of wound everted.

9- Fire arm wound of entry 2.5cm x 2cm x communicating to injury No.10 on the right elbow joint. Margins of wound inverted. No blackening and tattooing.

10- Fire arm wound of exit 8cm x 4cm x communicating to injury No.9 on the posterior medial surface of right arm 4cm below the injury No.9. Margins of wound everted and lacerated.

11-Fire arm wound of entry 2cm x 2cm x abdominal cavity deep, on the epigestric region, 1cm towards right to injury No.3. Margins of wound inverted. No blackening and tattooing.

12-Fire arm wound of entry, 1.5cm x 1cm x abdominal cavity deep on the right side of back, 6cm away to injury No.5 in horizontal place. Margins of wound inverted. No blackening and tattooing.

13- Fire arm wounds of entry, multiple on the antero lateral surface of left knee joint in an area of 12 cm x 10cm and 0.3 cm x 0.3cm x skin deep size. Margins of wound inverted. No blackening and tattooing.

Ulna and radius bones of left hand were found fractured.

On internal examination the frontal, parietal and left temporal bones of the skull were found fractured. Brain and brain membranes were lacerated. Base of the bones of the head were also

fractured. Vertebrae (L-2) was fractured. Second and third ribs of the left side were fractured. There was ½ liter clotted blood present in the stomach. Small and large intestines were lacerated at places. Liver and kidney were also lacerated. Eight metallic pellets were recovered from the body.

In the opinion of the Medical Officer the death of both these deceased occurred due to shock and haemorrhage as a result of ante-mortem injuries about one day ago.

13- From the above medical evidence there can be no doubt that both the victims Gurdeep Singh and Kulwant Singh died homicidal death. There post mortem examination was conducted from 10.30 A.M. on 27-1-2001 and according to P.W.7 Dr. Shamim Ahmad, the two deceased died about a day ago, meaning thereby the victims breathed their last near about the time of the incident, that is, at 11.40 A.M. as alleged by the prosecution. The evidence to this effect was also given by P.W.1 and P.W.2, the two eye witnesses and there can be no doubt that their evidence stand corroborated by the medical evidence in regard to the time of the incident. On behalf of the appellants the time of the incident has also not been challenged. In regard to the place of the occurrence also we find no serious challenge as is evidence from the cross-examination of the eye witnesses, one of whom, P.W.1 was merely suggested that entire incident had in fact taken place inside the house of the deceased. The suggestion was denied because the evidence was led to the effect that the firing by the accused assailants was started in the way when the two victims reached in front of the house on a motorcycle. Therefore, the place of the incident was, in fact also not seriously disputed and the learned Sessions Judge has also rightly held so in regard to this aspect of the case.

14- Having regard to the above aspect of the matter and the undisputed fact that P.W.1, informant Gurudev Singh and his mother P.W.3, Smt. Preetam Kaur were also occupying the same house in village Kela Banwari with the two victims and others, they are the most probable and natural witnesses of the occurrence. they have stated with one voice that when they came out of the house and were in the way to go to Bazpur town, the two victims

Gurudeep Singh and Kulwant Singh reached there on a motorcycle on their return from village Banna Kheda and at that point of time, that is, about 11.45 A.M. the four armed assailants started firing on the victims as a result of which Kulwant Singh fell then and there on the ground and died instantaneously due to fire arm injuries, whereas victim Gurdeep Singh ran from there and entered his house to be followed by these assailants and was not spared there also and as a result of which Gurdeep Singh also breathed his last on his bed inside the house as a result of the fire arm injuries. They also gave out that accused Smt. Veero Kaur was giving exhortation to the assailants to kill these victims and further that in the incident fire arm injuries was also sustained by one of them, viz. eye witness Smt. Preetam Kaur. They further testified that in the incident accused Jasvinder Singh wielded a double barrel gun whereas the other three accused viz. Dilbagh Singh, Tejendra and Satnam wielded their rifles in causing fatal injuries to the two victims. P.W.1 Gurudev Singh also proved written F.I.R., Ext. Ka.1 prepared by him and delivered at the police station. His motorcycle U.P.04-B-9904 was attached vide memo, Ext. Ka.2. As stated above, the names of accused Tejendra and Satnam were not mentioned in the F.I.R. as such and according to these witnesses their identity was fixed later on when the eye witness Sukhdev Singh (P.W.4) affirmed their participation.

15- Learned Senior Advocate on behalf of the accused (appellants) submitted that the conviction of the accused is founded solely on the evidence of these two witnesses and since their evidence was disbelieved in regard to the participation of the other two namely Tejendra and Satnam, it was not proper to accept their evidence so far as the role assigned to the accused is concerned and in the totality of the circumstances of the case the evidence of the witnesses deserve to be disbelieved in to-to. For the reasons assigned by the learned Sessions Judge Tejendra and Satnam, not named in the F.I.R., were acquitted although finding was recorded to the effect that two named and two unnamed actual assailants and accused Smt. Veero Kaur formed an unlawful assembly with the common object of committing the murders of the victims and to

make an attempt to commit the murder of another victim in the incident and therefore, merely because of acquittal of the two unnamed assailants of the F.I.R. the otherwise reliable evidence of these witnesses can not be said to be unacceptable so far as the role assigned to the accused (appellants) is concerned. The reason is that it is well settled the principle of 'Falsus in Uno Falsus in Omnibus' is not applicable in India and it is only a rule of caution. Even if a portion of the evidence of a witness is not accepted, if the remaining part of the evidence inspires confidence and is sufficient to prove the guilt of the accused, conviction can be based thereon on the basis of the evidence. Court has to separate chaff from grain to find in each case as to what extent the evidence is acceptable and if separation can be done, the evidence has to be accepted in regard to the participation of a particular accused in the crime. In the face of the facts of the case the reported decision of the Apex Court in the case of Prem Singh Versus State of Punjab; A.I.R. 1977 Supreme Court 673 pressed into service by the learned counsel for the accused can not safely be applied here to reject the evidence of P.W.1 and P.W.3. The facts of the reported case were that the evidence of two eye witnesses was accepted in regard to participation of one assailant whereas the evidence was disbelieved in regard to other four who were acquitted by the trial court and the finding was affirmed by the High Court. The convicted accused preferred appeal before the Apex Court and on the facts of the case the benefit of doubt was extended to the appellant and his conviction was set-aside on the ground that the evidence of the two eye witnesses was in total conflict with the medical evidence in the sense that although they claimed that spear injuries were caused to two victims by those other four assailants but the medical evidence revealed that there were no such injuries. The facts of the case were thus at variance and further on the principle referred above the evidence of the eye witnesses P.W.1 and P.W.3 can not be disbelieved on the ground that their evidence about the identity of the other two assailants was not accepted.

16- Here we find it advantageous to refer to the two decisions of the Apex Court in the matter of Vidya Devi Vs. State of Haryana;

(2004) 9 S.C.C. 476 and Sardar Khan Vs. State of Karnataka; (2004) 2 S.C.C. 442, where Hon'be Judges of the Apex Court have reiterated that acquittal of some of the accused by itself would not entitled the convicted accused to acquittal even if direct testimony against all of them is the same. These decisions also rebut the submission made on behalf of the accused (appellants) on the basis of the acquittal of the two appellants who were not named in the F.I.R.

17- P.W.1 Gurudev Singh gave out that his brother Kulwant Singh deceased was fired at by the assailants even after he fell down for the motorcycle after sustaining the fire arm injuries and that his father Gurdeep Singh drove motorcycle towards his house but the rear tyre of the motorcycle got punctured by fire arm shot whereupon his father left the motorcycle then and there and jumped over the court-yard wall and ran inside the house to be followed and chased by the assailants who continued to fire at his father as a result of which is father fell on his bed inside the room and died there due to fire arm injuries. Learned counsel submitted that such narration of the incident was not given in the written F.I.R., Ext. Ka.1 and besides this it is highly improbable that Gurdeep Singh aged about 62 years could have shown such an alacrity to be able to enter inside the house by taking a jump over the court-yard wall and to be fatally assaulted there inside the room of the house and these aspects of the matter indicate that the informant has not witnessed any incident and on coming to know of the murders of his brother and father cooked up the story to falsely implicate the accused (appellants) and others. Learned counsel also submitted that as is evidence from the inquest report, Ext. Ka.10 the dead body of Gurdeep Singh was found lying on his bed inside the room of his house, the incident might have taken place there and to justify the concocted version the witness went on to stated that his father ran inside the house in the above manner and was followed by the assailants there inside the house as a result of which his father fell on his bed and died due to fire arm injuries. It is well settled that an F.I.R. is not supposed to be an encyclopedia of the sequence of events and even if it does not contain the narration of

the sequence of events in the above manner it would not mean that the version was concocted to implicate the accused. Further, in a situation like this when the intention of the assailants was so clear, even a man of 60 years of age would gather all courage and strength to make his escape possible and there was nothing unusual for the victim Gurdeep Singh also to have gained such strength and ability so as to jump over the court-yard wall which was not very high and to run inside the house at once lest he may be cornered and showered at by fire arm shots of the assailants. Unfortunately the victim Gurdeep Singh was chased and followed by the assailants but it is certain that it was only on account of alertness shown by this victim that he received lesser number of fire arm shots as compared to the other victim Kulwant Singh deceased who sustained large number of fire arm injuries as referred above with reference to the medical evidence. Therefore, the submission of the learned counsel carry no conviction and the evidence of informant can not be viewed with disbelief. P.W.1 was fully corroborated by the injured eye witness Smt. Preetam Kaur (P.W.3) as similar narration of the incident was given by her and we find no infirmity in regard to their claim as to how the assailants way laid one of the victim Kulwant Singh and by chasing and following the victim Gurdeep Singh fatally assaulted him inside the house where he fell dead on his bed. We therefore also do not find that the manner of the actual assault was changed to suit the presence of these two witnesses and further to assert the involvement of the accused and their companions in the commission of the crime.

18- To discredit the testimony of these witnesses it was then urged that absence of any injury on the back of Gurdeep Singh belie the claim of the witnesses because in case the victim was chased and fired at by the assailants he was, in all probability, excepted to have sustained injury on the back and this aspect of the matter indicate that these witnesses were nowhere near the scene of the occurrence. Both P.W.1 and P.W.3 were cross-examined in regard to the actual place in front of the house where the victims were fired at and the place in the way from where the assailants wielded their fire arms. They gave out that the assailants wielded their fire

arms when they were standing near the south-east corner of their house situate in the south of the house of the victims and while the two victims were towards north from the assailants. P.W.1 further stated that the distance between them was about 15-20 paces. Similar position of the assailants and the victims has been shown in the site plan, Ext. Ka.19 by the Investigating Officer and the place where the victim Kulwant Singh was fired at the fell dead in the way has been shown by letter 'A'. The assailants came from the south east corner of the house while the victim was in the further north from them in the way. As is the case, the motorcycle was being driven by Gurdeep Singh whereas Kulwant Singh was the pillion rider and when the assailants first wielded their fire arms victim Kulwant Singh naturally received the shots on his person and as a result thereof fell down and after receiving further shots breathed his last at that point. This is the reason, as is evidence from his post mortem examination report, he sustained few fire arm injuries on the back and also on the side of his body organs. The other victim Gurdeep Singh however at once drove the motorcycle further towards north-west and after abandoning the motorcycle jumped over the wall in to his house before any serious fire arm injury could be sustained by him. The assailants have then chased him inside the house and was fired at and this was the reason that no injury on the back was received by him. It is also of significance that all the fire arm wounds on the person of this victim were not exactly on the front of the body but were on the side of abdomen, lateral to umbilicus and antero lateral surface of left thigh, which indicate that he was not hurt while running to save himself. In a situation like this absence of any injury on the back would not render the evidence of both these eye witnesses vulnerable and ultimately to be disbelieved on the strength of the argument of the learned counsel for the accused/assailants.

19- P.W.1 was confronted with his statement recorded under Section 161 of the Code of Criminal Procedure by the Investigating Officer in regard to the variation pertaining to Gurdeep Singh taking a jump over the wall and entering in his house and further that Kulwant Singh deceased was fired at also by the assailants

when this victim fell from the motorcycle. No doubt similar statement was not given to the Investigating Officer and further such narration was not made in the written F.I.R. but these infirmities can not be said to be substantial in nature so as to create grave doubt in the veracity of the evidence of the witness. It is well settled that minor infirmities and variations do occur even in the evidence of truthful witness. Therefore, for this reason also the evidence of the witness can not be termed as shaky and discrepant.

20- Referring to the statement of P.W.1 (paragraph 23 of the statement) learned counsel for the accused/assailants again urged that this witness was nowhere near the scene of the incident and he was not even aware as to when the dead bodies of the two victims were sent from the scene of the occurrence for post mortem. P.W.1 stated that he had gone to the place of occurrence with the Investigating Officer at about 3-4 P.M. and told him all about the site of the incident. He also gave out that by that time the dead bodies of the two victims have already been shifted from there and he could not tell as to when these were taken away from there and by whom. Reference was also made to the statement of I.O., P.W.8 who claimed to have reached the scene of the incident along with informant P.W.1 soon after the registration of the case and thereafter supervised and inquests held on the dead bodies by S.I. S.N. Mishra (P.W.6). Having considered the evidence of P.W.1 and P.W.8 it is obvious that P.W.1 has referred to his getting the site inspected by the Investigating Officer at about 3-4 P.M. that day and by that time the dead bodies have already been sent for post mortem after holding inquest on them. It was in this context that P.W.1 gave out that he reached or in fact accompanied the Investigating Officer at 3-4 P.M. to have the site inspected by the Investigating Officer. This also is the reason that the Investigating Officer, P.W.8 after doing other formalities of the investigation in regard to the inquest on the dead bodies and preparation of the memos of recoveries etc lastly took up the job of preparing the site plan after inspecting it with the aid of the eye witness and naturally this was done when the dead bodies have already been dispatched for post mortem. Therefore, the evidence of the

Investigating Officer and the informant P.W.1, is in consonance and conformity with the steps taken in above sequence and P.W.1 has in fact clearly referred to the tome 3-4 P.M. to the event of preparation of the site plan by the Investigating Officer with his help after the dead bodies have already been sent for post mortem. In a situation like this the submission of the learned counsel, being completely out of tune, the statement of P.W.1 picked up out of context, carry absolutely no conviction and the evidence of P.W.1 can not therefore be said to be unreliable. The evidence of P.W.1 also rebut the submission of the learned counsel for the accused that the dead bodies of the two victims have in fact been removed or shifted from the place of the occurrence even prior to the arrival of the Investigating Officer and even before the steps towards the investigation of the crime were started. There can be no gain saying that the statements of P.W.1 and P.W.8 being consistent on the point admit of only one inference that the steps towards investigation of the crime commenced in the usual manner after the F.I.R. was lodged by P.W.1 and Investigating Officer thereafter left for the village of the occurrence and completed and other formalities of the investigation that day including the inquest on the dead bodies under his supervision and thereafter dispatched the dead bodies for post mortem examination.

21- In the incident four assailants wielded fire arms but informant P.W.1 did not sustain injury or in other words assailants did not made any attempt to cause any harm to him also. Learned counsel for the accused argued that if there was enmity pertaining to the land and P.W.1 was according to him in the way along with his mother P.W.3, the assailants would not have spared him and he too must have been made to sustain fire arm injuries. In his argument the absence of injury belie his claim of being the eye witness of the incident. We see no substance in this argument also because it is not always possible to read the criminal’s mind as to how it acts in a given situation and more over from the evidence in the case it is evidence that only the two victims Gurdeep Singh and Kulwant Singh were targeted by the accused and therefore not giving any harm to the informant would not indicate that he was not

present at the scene of the incident. In the event of enmity also it was expected that every member of the family has got to be eliminated. More ever the elimination of informant would not have served any purpose as he has got another brother named as Hardev Sigh who was then staying in England as stated to by the informant-witness and also his mother , his sister-in-law Balbir Kaur, the wife of Kulwant Singh deceased and also a three years old son of Kulwant Singh deceased as members of the family of Gurdeep Singh deceased. This aspect of the matter however can not be taken to belittle the claim of the prosecution that in the incident P.W.3 Smt. Preetam Kaur was made to receive injuries even that of fire arm while she was also in the way along with her son P.W.1 and witnessed the actual occurrence. There is consistent narration by these witnesses in the evidence that injured witness Smt. Preetam Karu also received injuries when both these witnesses went inside the house when the four assailants were following and chasing Gurdeep Singh deceased right up to inside the house and fired at him causing him fatal injuries as a result of which this victim fell on his bed in the room and breathed his last. If one witness had received injuries in the incident, it is not necessary that every other eye witness of the incident was supposed to have been hurt at the hands of the accused.

22- With reference to the above, it also need to be stated that both these witnesses also gave out that the accused entered inside the house from the southern door and fired at Gurdeep Singh who had already jumped over the wall and at that time P.W.3, Smt. Preetam Karu reached there at the door of the room and was then hit by fire arm shot sustaining injury. Neither P.W.1 nor P.W.3 could tell as to which of the accused had fired shot at her but this aspect of the matter would also not tell upon their credibility. Similarly they could not say as to which of the assailants fired at which of the other two victims of the case although they have been consistent that all assailants wielded their fire arms in the incident. The incident took place all of a sudden as soon as the two victims reached in the way in front of the house and in a situation like this it would be difficult to state as to which of the fire arm shot of a

particular assailant had hit the particular victim of the case. considering this aspect of the matter also the evidence of both the witnesses can safely be said to be quite natural and straight forward.

23- Learned counsel also referred to the statement of P.W.3, Smt. Preetam Kaur and submitted that her medical examination report was fabricated to guarantee her presence at the time of the occurrence and therefore, her evidence should have been held to be un-trustworthy. Learned counsel claimed that the learned Sessions Judge has not properly appraised this aspect of the matter in relation to this injured witness. In order to appreciate the merit of the argument the injuries found on the person of the witness are to be mentioned here. P.W.2, Dr. M.M. Prasad medically examined Smt. Preetam Kaur at 1.45 P.M. on 26.1.2001 and detected following injuries on her person:-

1. Lacerated wound (0.3 cm x 0.2 cm) over left parietal anteriorly , 9 cm above left eye-borw. Margin of wound is inverted . bleeding present, depth of wound is under observation and for that x-ray advised.
2. Lacerated wound (0.3cm x0.2 cm) over left arm, laterally, 9 cm above left elbow-joint. Margin of wound is inverted. Bleeding present. Depth of wound is under observation and for that x-ray advised.

According to the Medical Officer the injuries were caused by fire arm and to determine their nature, these were kept under observation. The injuries were found fresh ad were probably caused within a period of six hours from the time of the medical examination. In cross-examination he gave out that injuries were superficial and there was no blackening around the injuries. He had not noticed the direction of the injuries and had opined that these were referred fire arm injuries on the basis of the margins of the wound being inverted. He had not prepared any supplementary report because no x-ray was produced thereafter by the injured.

24- To support the argument, learned counsel pointed out that Smt. Preetam Kaur was not taken to Community Health Centre Bazpur by any police constable and that if it was to be a medico

legal case, she must have been sent with a police constable and the injury letter for medical examination by the government doctor of the center. According to learned counsel to facilitate preparation of fabricated injury report this mode was adopted and Smt. Preetam Kaur was not first of all taken to the police station to be referred to the C.H.C., Bazpur for medical examination. In the incident before her eyes her husband and young son were murdered and therefore she must be under terrible strain and grief and in a situation like this if she was not taken to the police station and after some time was taken to the C.H.C. Bazpur for medical examination there was nothing unusual in it and merely on this account the medical examination report and the evidence of the medical officer can not be safely discarded by holding that the injuries were fabricated.

25- The injuries were found to be superficial and after medical examination the x-ray was not done or was not produced for preparation of the supplementary medical examination report. This omission can not be taken to belie the claim of the prosecution and the define statement of both the witnesses P.W.1 and P.W.3 that injuries were received by this witness in the incident. Learned counsel also brought to our notice the commentaries on Medical Jurisprudence by renowned authors, namely Dr. C.K. Parekh, H.W.V. Cox, Harrison and Harsh Mohan to buttress the argument that fictitious injuries are usually superficial and are not situated on vital parts of the body. No doubt board criterion by these authors in regard to the fabricated or self-inflicted injuries have been given but considering the board features of the case, the place and time of the occurrence and the natural presence of these witnesses at their house at that hour of the day, we are of the firm view that there was no occasion for the witness to fabricate the injuries to justify her presence at the scene of the incident. Even if the above injuries are superficial and despite advice probably the x-ray was not done to determine the nature of the injuries, it is of significance that one of the lacerated wound was on left parietal region, 9 cm above left eye-brow, and in our view the witness was not expected to have received a self-inflicted injury on this vital part of the body. The medical officer is an independent witness and there is nothing to

doubt his integrity in regard to the claim that Smt. Preetam Kaur was brought to the C.H.C. and was medically examined by him on that day and that these injuries were in fact detected on the person of the said injured. Therefore, the above argument of the learned counsel can safely be said to be without force as it can not be accepted that P.W.3 was not present at the scene of the incident and in order to show her presence there at the time of the incident her injuries were fabricated.

26- Both P.W.1 and P.W.3 gave out that the assailants wielded their fire arms at the victims not from close range bur from considerable distance. P.W.1, has referred to the said distance as 15-20 paces. Pointing out to the distance from which the fire arms were wielded learned counsel for the accused submitted that on the fire arm injury blackening and tattooing would not be caused, but still P.W.7, Dr. Shamim Ahmad who conducted the post mortem examinations reported presence of blackening and tattooing against injury No.1 of Gurdeep Singh deceased and it is evidence that there is inconsistency and conflict between the ocular and the medical evidence as a result of which the evidence of these witnesses deserve to be discarded. In support of the argument learned counsel placed reliance on a reported deceased of the Division Bench of Allhabad High Court in the matter of Barikanno and another versus State of U.P.; 1997 (1) Crimes, 500, the Apex Court decisions in the matter of State of U.P. Vs. Ram Bahadur Singh and others; (2004) 9 Supreme Court Cases 310, in the matter of State of U.P. Vs. Bhagwant and others; J.T. 2003(4) S.C. 131, in the matter of Nachhettar Singh Vs. State of Punjab; A.I.R. 1976 Supreme Court 951 and in the case of State of Haryana Vs. Ram Singh with Rai Saheb and another Vs. State of Haryana; 2002 Supreme Court Cases (Cri.) 350.

27- Having considered the submission of the learned counsel we find no substance in this argument also because the learned counsel has tried to create mountain out of a mole hill on account of mere inadvertent omission by the medical officer in his statement. The medical officer while describing the ante-mortem injuries of Gurdeep Singh with reference to the post mortem examination

report, Ext.Ka.15 stated in regard to injury No.1 that there was no blackening and tattooing on the wounds described under this injury No.1. In fact against this injury in the post mortem report it is specifically mentioned that no blackening and tattooing was present. The post mortem report go spoiled and there appear some difficulty in reading the word 'No' before blackening and tattooing although on deep observation it is clearly visible and word 'No' is mentioned in that manner indicating that no blackening and tattooing was found present on the wounds described under ante-mortem injury No.1. The inadvertent mistake escaped clarification but having observed and detected it we feel no hesitation in saying that it was a case of mere inadvertent omission to mention that no blackening and tattooing was present on the wounds of the injury No.1 and therefore there was no occasion to assail the testimony of the eye witnesses. In this regard we find it necessary to mention that in none of the ante-mortem injuries of the two victims blackening and tattooing was found present and this was on account of the reason that there has not been close range firing at the victims in the incident. In a situation like this the above reported decisions based on facts having variance can not be taken to support the argument that there being conflict between the ocular and the medical evidence, the evidence of the eye witnesses deserved to be disbelieved and discarded. In our view the ocular evidence of the witnesses find full corroboration from the medical evidence on record and this aspect of the matter further lend credence to the version as given by these witnesses in regard to the proof of the allegations against the accused.

28- Learned counsel for the accused also tried to take support from the reported decision in the matter of Nachhettar Singh (supra) and also from a decision of the Apex Court in the case of Brijpal Singh Vs. State of U.P.; A.I.R.2003 Supreme Court 2460 by referring to the report of the Ballastic Expert (Ext. Ka.25) tendered in evidence. One empty out of twenty one .315 bore empty cartridges and three out the eight 12 bore empty cartridges found at the scene of the incident and attached by the Investigating Officer were not found to have been fired from the rifle seized from

accused Dilbagh Singh and from the double barrel gun seized from accused Jasvinder Singh respectively at the tile of their arrest on 31.1.2001 vide memo, Ext. Ka.20. The remaining empties were reported to have been fired by these weapons of the accused. Learned counsel therefore submitted that this factual aspect of the matter belie the claim of both the eye witnesses because according to them and the prosecution version only one 12 bore gun was wielded by accused Jasvinder Singh and also because it could not be believed that apart from the accused Dilbagh Singh the other two assailants alleged to have wielded rifles would have fired only single bullet in the incident as against the claim that there has been indiscriminate firing from their weapons. As noted in the earlier part of the judgment the incident took place all of a sudden on the arrival of the two victims on a motorcycle and therefore witnesses could not have been expected to say that particular number of shots were fired by each of the four fire arms wielding assailants. Only two fire arms as referred above were seized from the two accused and if twenty .315 empty cartridges have been attributed by their use to the rifle seized from accused Dilbagh Singh it would not matter much when assailants were sharing the common intention to commit the crime. Likewise the non-matching of three empty cartridges of 12 bore would not entitled the defence side to claim that the evidence of eye witnesses on this account deserve to be discarded as they gave out that out of the four only one accused Jasvinder Singh was then carrying 12 bore gun and fired shots from it to commit the crime. The other aspect of the matter is that the report of Ballastic Expert is positive in regard to the use of the gun seized from this accused in the commission of the crime. In a situation like this the decision of the case of Nacchettar Singh (supra) has no bearing to the facts of the case as the decision was based on altogether different facts and the prosecution claim was discarded not merely on the ground of some empty cartridges found at the scene of the occurrence not connected with the gun recovered from the appellant (Balwant Veer) of that case but also on other compelling and cogent grounds such as the fire arms said to have been recovered from the appellant were not

tested to have freshly used; there was no matching injury of the rifle, no independent witness was examined; the evidence of four eye witnesses was not found worthy of credence; the empty cartridges and the fire arms were sent to the Ballastic Expert after unexplained delay of five weeks and the prosecution claim about the arrest and recovery of the fire arms and the cartridges was very shaky. So far as the other reported decision of Brijpal Singh (supra) is concerned, it is so significance that in that case the empty cartridges found near the dead body was not fired from mouser rifle which was allegedly used in the commission of the crime and further there were inter se contradictions in the evidence of eye witnesses of that case and taking cumulatively these factors the prosecution evidence was not found reliable and benefit of doubt was given to the accused. However, the evidence of both the eye witnesses in the instant case has been found to be reliable and the report of the Ballastic Expert do not materially effect their credibility and further the two witnesses despite being related witnesses have stood the test of piercing cross examination and their evidence on careful scrutiny has been found to be trustworthy. Thus the reported decision pressed in the two service on behalf of the accused have no bearing at all on the facts of the case and these decisions do not support the cause of the accused.

29- Veracity of the F.I.R. of the case was also adversely commented upon by the learned counsel for the accused and it was argued that the F.I.R. of the case does not corroborate the evidence of these eye witnesses. It was also submitted that the written F.I.R., Ext. Ka.1, came into existence after the steps towards the investigation of the case have already been taken up and this was the reason that its narration differs from the narration as contained in the check F.I.R., Ext. Ka.4. We see no merit in this argument also because it is proved by the evidence of head constable Ramesh Singh Bora (P.W.5) that when he prepared the check F.I.R. some description as contained in the written F.I.R., Ext. Ka.1 by inadvertent mistake left to be incorporated or mentioned in the narration of the check F.I.R., Ext.Ka.4. The narration omitted was as below:-

'' राइफल लिये हुये तथा जसबिन्दर सिंह पुत्र जीत सिंह निवासी ग्राम केला बनवारी थाना बाजपुर अपने हाथ में''

By virtue of above omission possession of gun stand attributed to accused Dilbagh Singh whereas the name of accused Jasvinder Singh went altogether missing with regard to the weapon he was then carrying to make assault on the victims and since this omission in the narration being quite unusual and unnatural, it was thus established that it so occurred on account of the inadvertent mistake made by P.W.5 while copying the narration from the written F.I.R., Ext. Ka.1 to prepare the check F.I.R. Ext. Ka.4. In fact it is not a case of changing of written F.I.R. version or narration because it has been the consistent claim of the prosecution that out of the four assailants, three were having rifles and one was carrying a gun which were wielded in the commission of the crime and in the face of such a version the wielding of gun by the assailant other than the accused Jasvinder Singh would have made no difference so far as the participation of all the four assailants in the commission of the crime was concerned. It also makes no difference if the information on receiving the copy of the check F.I.R. did not notice above inadvertent omission or mistake because, normally an informant do not tally the narration of the copy with the written information delivered at the police station on the basis of which check F.I.R. is drawn up by the clerk constable.

30- To bring home the above point of view that F.I.R. was ante-timed reference was also made to the provision of Section 157 of the Code of Criminal Procedure and it was submitted that the F.I.R. was sent to the jurisdictional Magistrate after a long delay of about one month as is evidence from the reply to the questionnaire of the court of the Magistrate, Ext. Kha.1. In the relevant column of the check F.I.R. it is mentioned that the F.I.R. was sent by post but no date has been mentioned. No doubt the said paper Ext. Kha.1 indicate that the F.I.R. was received as per the entry of the register of the Magistrate on 27.2.2001 whereas the F.I.R. was registered on 26.1.2001 but we can not lose sight of the fact that soon after the lodging of the F.I.R. the inquests on the dead bodies of the two victims have been held and these were dispatched the same day,

that is, 26.1.2001 for post mortem examination, which were conducted next day on 27.1.2001, therefore in the face of completion of such important formalities of the investigation it could not be accepted that the F.I.R. did not come into existence at the time as alleged and proved by the prosecution and therefore even if there was such delay in sending the F.I.R. to the jurisdictional Magistrate the same will not have telling effect on the prosecution version and assail the otherwise trustworthy evidence of the two eye witnesses. It is well settled and as has also been reiterated by the Apex Court in the case of Balram Singh and antoehr Vs. State of Punjab; 2003 A.I.R. S.C.W., 2656, the delay in sending the F.I.R. to the jurisdictional Magistrate by itself would not weaken the prosecution case. Therefore, either on the basis of delay in sending the F.I.R. to the jurisdictional Magistrate or on the basis of some mistake in preparing the check F.I.R. on the basis of the written report it can not safely be accepted that the F.I.R. of the case was ante-timed. Further, the distance of police station from the village of occurrence being 13 K.Ms., the lodging of the F.I.R. at 1.45 P.M. indicate that it was lodged without delay on the day of the occurrence itself. In the face of the fact of the case we are not inclined to entertain any doubt in the veracity of the F.I.R. of the case. in our view the prompt F.I.R. of the case also fully corroborate the testimony of P.W.1 and P.W.3. Attention was then drawn to the omission of time of receiving the dead bodies at Police Head Quarter in the relevant columns of Challan Reports in Form 13, Ext. Ka.8 and Ext. Ka.13 to content that this also show that F.I.R. of the case was not drawn at the time as shown in it but it was ante-timed and to facilitate the same the above columns were left unfilled. In this case the dead bodies of the two victims were sent to Kashipur, hospital for post mortem instead of district head quarter at Rudrapur which is at a greater distance and in a situation like this the dead bodies were not to be sent to Police Head Quarter at Rudrapur. So when the dead bodies were not sent there the relevant columns in the two Challan Reports remained unfilled. The time of receiving the dead bodies at Police Head Quarter was thus required to be mentioned and this omission can not, therefore,

be taken to base the above argument against the veracity of the F.I.R.

31. According to I.O., P.W.8, Section 452 and 427 I.P.C. were added on 26.1.2001 itself to the other sections under which the case was registered and decision for the addition was taken after site inspection. However these sections were not shown added to the various documents of the prosecution till as late as 23.2.2001 when these sections were mentioned I the memo. Ext. Ka.22, by which six photographs of the site of incident were attached by him. Earlier the sections 147/148/149/302/307 I.P.C. only were continued to be mentioned in various documents such as seizure memos, G.D. reports etc. Referring to this aspect it was submitted that the I.O. had been careless and the investigation had not been fairly made. In our view this infirmity has had no telling effect on the evidence adduced in the case and found reliable.

32- Further, I.O. admitted in his evidence that on the day of occurrence he had recorded the statement of informant Gurudev Singh only and statements of other witnesses were recorded later on. Informant was examined by him on more than two occasions. Referring to this also the investigation was stated to be tainted. We se no merit in the submission because it is settled that the delay in recording the statements of P.Ws. would not render the prosecution case doubtful and further that it would not effect the merit of the evidence of P.W. if it is otherwise truthful and reliable. Reference may be made to the decision of the Apex Court in the matter of Ganesh Lal Vs. State of Maharashtra; (1992) 3 S.C.C. 106. It had been observed in that case that delay in taking statements of witnesses does snot render the testimony of the witnesses doubtful, though evidence has to be scanned carefully. It was further stressed that each case has to be considered on its own facts. If witness is found to be natural and truthful his evidence need not be doubted due to delay. In that reported case there was delay of about 2- 2 ½ months but the evidence on fact of the case was held to be reliable. In the instant case the evidence of P.W.1 and P.W.3 on scrutiny has been found reliable and natural, therefore the submission on the

ground of delay in taking statements under Section 161 Cr.P.C. carry no conviction.

33- Learned counsel for the accused then pointed the statement of I.O. that he had not given any time and note in case diary as to when the investigation was commenced, when it was concluded and when the statements of P.Ws. were recorded and thus the irregularity in the investigation being writ large, it had the effect of showing that the case against the accused was cooked up at the instance of the informant. Another instance highlighted pertain to memo, Ext. Ka.18, by which the I.O. alleged to have attached mobile phone, licence of DBBL gun, a bank draft, an application for booking of revolver for one of the accused Dilbagh Singh, which are material exhibits 33 to 36 from the place of occurrence. However these items were not mentioned in the G.D. report no.44 dated 26-1-2001 which relate to the recoveries made from the place of occurrence vide memo Ext. Ka.17 etc. No explanation was given by I.O. for this omission and by reason of this the said recovery of items was disbelieved by the learned Sessions Judge. On this account learned counsel wanted that evidence in regard to other recoveries to be discarded. Learned Sessions Judge did not accept the submission and in our view rightly so. Reason being that on irregular step in the investigation of the case can not safely be taken to find fault in other steps towards the investigation of the crime undertaken by the I.O.

34- I.O. has also admitted that each and every ‘parcha’ of case diary was not having signature of the superior police officer and further that the serial numbers of the pages of the case diary were not continuous and regular indicating that it has not been kept properly as envisaged by the directions of the Police Manual and therefore the I.O. has had every opportunity to manipulate things so that purpose to implicate the accused in the crime may be achieved. No doubt it may be a case of carelessness on the part of the Investigating Officer but we are not inclined to subscribe to the view that the I.O. wanted to falsely implicate accused in the case. the Apex Court in the case of Amar Singh vs. Balwinder Singh; 2003 A.I.R. S.C.W. 717 (para-15) observed that when prosecution

case stand fully established by direct testimony of eye-witnesses and corroborated by medical evidence, any failure or omission of Investigating Officer, can not render prosecution case doubtful or unworthy of belief. In another reported decision in the matter of Sahdeo and others Vs. State of U.P. with Satyendra Vs. State of U.P.; 2004 A.I.R. S.C.W. 3362, even though the Apex Court observed that the investigation of the case was hopelessly conducted and the same was highly unsatisfactory still the appellants of that case were, on the basis of otherwise reliable and inspiring evidence of eye-witnesses, held responsible for causing the death of the victims of that case. The investigation in the instant case however by any legal yardstick can not be said to be highly unsatisfactory and therefore the infirmities pointed out have no adverse effect or bearing on the truthful testimony of P.W.1 and P.W.3 regarding the manner of the crime and its actual perpetrators.

35- A faint attempt was also made on behalf of the accused that they were deprived of fair opportunity to meet the charges against them on account of non-furnishing of all the documents to them in compliance of the provision of Section 207 of the Code of Criminal Procedure. We find that specific endorsements on the order sheet dated 25-9-2001, the date on which the accused were committed to court of Sessions by the Magistrate concerned reveal that the accused have received copies of all the documents under Section 207 of the Code of Criminal Procedure. Therefore, the submission to the contrary can not be sustained.

36- As regards the cause of crime is concerned it was urged that for want of cogent evidence that there was litigation between the two side on the subject matter of landed property it could not be believed that the accused went out to commit the crime. Even if no document relating to litigation was produced to establish motive, it being a case based on direct evidence the question of motive loses significance and on that account the prosecution evidence can not be disbelieved.

37- So far as the propriety of the finding of acquittal of two accused Tejendra Singh and Satnam Singh is concerned, we also, on appreciation of the evidence in the case and more particularly in

the backdrop of the fact that despite assertion that these two accused also related to the informant and very well known to him and other witnesses were not named in the F.I.R., find ourselves in agreement with the view taken by learned Sessions Judge. The reason is that these two accused being relative were to be nominated specifically along with other accused in every probability when the incident took place in broad day light. In fact the two armed assailants who were with the accused Dilbagh Singh and Jasvinder Singh were not known to the P.Ws. and later on after deliberation P.Ws. went on to claim that the two other assailants were Tejendra Singh and Satnam Singh. To justify the claim witness Sukhdev Singh (P.W.4) was made to stated and assert on 4.2.4001, the ninth day from the date of occurrence, before the I.O. that the two assailants not named in the F.I.R. were Tejendra Singh and Satnam Singh and he had witnessed the occurrence. Evidence of P.W.4 that after witnessing the incident of the case he had gone away and returned on 28-1-2001 and told P.W.1 and P.w.3 about these two assailants is not at all convincing and it was rightly disbelieved by the learned Sessions Judge. in the face of this evidence we see no merit in the argument of learned counsel appearing on behalf of the informant-revisionist that the view taken by the learned Sessions Judge in regard to the two accused (Tejendra Singh and Satnam Singh) being perverse need to be interfered with so as to set aside the judgment of acquittal of these two assailants . It also need to be stated that the scope of review in a revision by private complainant against an order of acquittal against which Government/State has a right of appeal is very limited and it could be exercised in exceptional cases where the interests of public justice require interference for the correction of manifest illegality or the prevention of miscarriage of justice. The case of these two acquitted accused does not fall in that category and therefore the revision so preferred is liable to be dismissed.

38- The role assigned to accused Smt. Veera Kaur in the occurrence is that she had exhorted the other accused-assailants to kill the victims of the case. She was not armed at that time and has also not accompanied the other accused-assailants when they

chased and followed the victim Gurdeep Singh right inside his house to fatally assault him by wielding the fire arms after the other victim was already done to death by them. From the facts and circumstances of the case we find force in the contention that on account of her being the mother of the two other accused (appellants) she had been falsely roped in by assigning the role of exhortation to her. It is not uncommon that on commission of a crime the complainants have tendency , on account of enmity, to implicate an innocent along with real culprit by assigning some minor role to such a person. It appear that the informant in the instant case clutched on an opportunity to implicate Smt. Veero Kaur, in the commission of crime along with the real culprits. Therefore, on this account and also as a matter of abundant caution, the learned Sessions Judge should not have held that she was also the member of unlawful assembly of which other members were her two sons and their two companions all of whom took part in the assault and she was thus exhorting them to kill the victims of the case to fulfill the object of the unlawful assembly. On the face of the facts of the case we could not subscribe to the above view. We are of the considered view that Smt. Veero Kaur has not participated in commission of crime in any manner whatsoever and she is entitled to be acquitted of the charges levelled against her.

39- Having held so it is obvious that the number of the culprits being less than five the accused Dilbagh Singh and Jasvinder Singh could not have been convicted for an offence punishable under Section 148 I.P.C. and further on account of non-applicability of Section 149 I.P.C., they could have been convicted under Section 302 I.P.C., read with Section 34 I.P.C. for committing the murders of Gurdeep Singh and Kulwant Singh and also under Section 307 I.P.C. read with Section 34 I.P.C for attempt to commit the murder of Smt. Preetam Kaur, as they committed the crime in furtherance of their common intention with two other companion-culprits. The conviction of these two accused therefore need to be modified accordingly. However the sentences awarded being just and proper shall be maintained.

40- In the facts and circumstances of the case and for the reasons as given above the criminal revision against the acquittal of Tejendra Singh and Satnam Singh is liable to be dismissed and whereas the two appeals are to be partly allowed and the judgment dated 1-10-2002, passed by the learned Sessions Judge, Udham Singh Nagar in S.T. No. 345/2001 is to be modified accordingly.

41- Criminal revision No. 121/2002 is hereby dismissed.

42- Criminal appeal Nos. 261/2002 and 262/2002 are partly allowed. The appellant Smt. Veero Kaur is held no guilty and is acquitted of the charges under Sections 147 I.P.C., 302/149 I.P.C. and 307/149 I.P.C.. She is in jail. She shall be released forth with, if not wanted in connection with any other case.

43- The accused-appellants Dilbagh Singh and Jasvinder Singh are held not guilty and acquitted of the charge under Section 148 I.P.C. The conviction of both these accused-appellants is altered to one under Section 302 read with Section 34 I.P.C. and under Section 307 read with Section 34 I.P.C. instead of under Sections 302/149 I.P.C. and 307/149 I.P.C. respectively and the sentences of

nimprisonment under both that counts are maintained. The sentences as directed by the learned Sessions Judge shall run concurrently. The appellants are in jail. They shall suffer the sentences as awarded.

44- Let the record of the case be sent to the learned Sessions Judge for compliance, to be reported to the Court within one month.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

ISB